IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7597 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MUKESHBHAI HARIHAR DAVE

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 7597 of 2001

MS BANNA S DUTTA for Petitioner No. 1

GOVERNMENT PLEADER for Respondents No. 1-3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 07/01/2002

ORAL JUDGEMENT

The petitioner herein came to be detained by virtue of an order passed by the Commissioner of Police,

Ahmedabad City on July 11,2001 in exercise of powers under Section 3 of the PASA Act. He challenges his detention by this petition under Art. 226 of the Constitution of India.

2. The grounds of detention indicate that the petitioner has been branded as a boot-legger. The detaining authority took into consieration one prohibition case registered against the detenu and statements and two anonymous witnesses which were recorded by the sponsoring authority. The authority recorded the satisfaction that the fear expressed by the witnesses was genuine and there was need for exercise of power under Section 9(2) of the PASA Act. The authority also observed that the petitioner is required to be immediately prevented from pursuing his illegal and anti-social activities for which detention under PASA is the only effective remedy availing with the detaining authority.

3. Learned Advocate for the petitioner has raised number of contentions, one of which is that the representation made on behalf of the detenu was not properly considered which has affected the right of the detenu of making an effective representation envisaged under Ar. 22(5) of the Constitution of India.

4. The petition has been vehemently opposed by learned AGP Mr. Patel. On being specifically put, he says that representation made on behalf of the detenu on July 24, 2001 was received by the Government on 25.7.2001 and after due procedure, it was decided on 2.8.2001. He states after going through the file of the Department that the same was communicated to the detenu on 8.8.2001.

5. It is therefore, amply clear that the petition can be entertained on this sole ground of delay in communicating the decision affecting the right of detenu of making an effective representation resulting into vitiation of the continued dtention of the petitioner. Admittedly, although the decision was taken on 3.8.2001, it was communicated on 8.8.2001. Even if two holidays falling in between are considered, there is total inaction on the part of the Government in communicating the decision on 6th and 7th of August, 2001. It has infringed the right of the detenu of making an effective representation invested under Art. 22(5) of the Constitution of India. The continued detention of the detenu therefore stands vitiated. The petition therefore deserves to be allowed.

6. The petition is therefore, allowed. Order of detention dated July 11, 2001 passed by the Commissioner of Police, Ahmedabad City, Ahmedabad is quashed and set aside. Detenu Mukesh Harihar Dave be released from detention forthwith, if not required in any other case. Rule made absolute. No costs.

(A.L.Dave,J.)

*/Mohandas